

## 21 C.J.S. Courts § 37

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### Courts

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### II. Jurisdiction of Courts

#### C. Jurisdiction of Subject Matter or Cause of Action

#### 3. Jurisdiction of Res or Property

### § 37. Nature, scope, and effect of in rem jurisdiction

[Topic Summary](#) | [References](#) | [Correlation Table](#)

#### West's Key Number Digest

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**Jurisdiction over the res or property is a type of subject matter jurisdiction consisting of the power of the court over the thing before it without regard to the persons who may be interested in it.**

In rem jurisdiction is a type of subject matter jurisdiction<sup>1</sup> necessary for the determination of title to property and the parties' rights, not merely among themselves, but also against all persons at any time claiming interest in that property<sup>2</sup> or in which the named defendant is real or personal property.<sup>3</sup> It is concerned with the relationship of the defendant and the State with respect to specific property,<sup>4</sup> does not require personal service of process,<sup>5</sup> and does not adjudicate any personal claim or personal liability.<sup>6</sup> Service on the property owner pertains only to notice and an opportunity to be heard, not the court's jurisdiction.<sup>7</sup> Personal jurisdiction is not an issue in an in rem proceeding based on the presence of the property in the forum state.<sup>8</sup>

In rem jurisdiction gives the court possession or some control over property in order to grant relief sought,<sup>9</sup> meaning actual or constructive control over the physical object at issue.<sup>10</sup> The in rem jurisdiction of a court is founded on physical power,<sup>11</sup> and has its basis in the presence of the subject property within the territorial jurisdiction of the forum court,<sup>12</sup> not encompassing foreign property<sup>13</sup> or property without the limits of the court's territorial boundaries.<sup>14</sup> When the subject matter of the controversy is property located in the state, the constitutional requisites for jurisdiction will generally be met.<sup>15</sup> When the res is released or removed from court's control, the court's in rem jurisdiction over the res is terminated.<sup>16</sup>

In rem jurisdiction operates directly on the property,<sup>17</sup> only on the property,<sup>18</sup> and against the property itself.<sup>19</sup>

In an action in rem, the jurisdiction of the court over the property attaches at the institution of the suit,<sup>20</sup> and the court's judgment predicated on in rem jurisdiction of the res is binding on a party with an asserted interest in the res after proper notice.<sup>21</sup>

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## Footnotes

- 1 U.S.—*Stansell v. Revolutionary Armed Forces of Colombia (FARC)*, 2015 WL 8731783 (M.D. Fla. 2015) (applying Florida law).  
  
 Colo.—*Sanctuary House, Inc. v. Krause*, 177 P.3d 1256 (Colo. 2008).  
  
 Fla.—*Burns v. State, Dept. of Legal Affairs*, 147 So. 3d 95 (Fla. 5th DCA 2014).  
  
 Va.—*Whitt v. Com.*, 61 Va. App. 637, 739 S.E.2d 254 (2013).
- 2 U.S.—*Chevalier v. Estate of Barnhart*, 803 F.3d 789 (6th Cir. 2015) (applying Ohio law); *Hanover Insurance Co. v. Fremont Bank*, 68 F. Supp. 3d 1085 (N.D. Cal. 2014) (applying California law).  
  
 Minn.—*Nagel v. Westen*, 865 N.W.2d 325 (Minn. Ct. App. 2015), review denied (Sept. 15, 2015).  
  
**Interests of all persons in property**  
 Ill.—*ABN AMRO Mortg. Group, Inc. v. McGahan*, 237 Ill. 2d 526, 342 Ill. Dec. 7, 931 N.E.2d 1190 (2010).  
  
 Utah—*Aequitas Enterprises, LLC v. Interstate Inv. Group, LLC*, 2011 UT 82, 267 P.3d 923 (Utah 2011).
- 3 U.S.—*Chevalier v. Estate of Barnhart*, 803 F.3d 789 (6th Cir. 2015) (applying Ohio law).  
  
 Ill.—*Metrobank v. Cannatello*, 2012 IL App (1st) 110529, 357 Ill. Dec. 977, 964 N.E.2d 656 (App. Ct. 1st Dist. 2012).

- 4 Ill.—Smith v. Hammel, 383 Ill. Dec. 459, 14 N.E.3d 742 (App. Ct. 5th Dist. 2014).
- 5 Fla.—Miccosukee Tribe of Indians of Florida v. Department of Environmental Protection ex rel. Board of Trustees of Internal Imp. Trust Fund, 78 So. 3d 31 (Fla. 2d DCA 2011).  
Ill.—Smith v. Hammel, 383 Ill. Dec. 459, 14 N.E.3d 742 (App. Ct. 5th Dist. 2014).
- 6 Ill.—Jayko v. Fraczek, 2012 IL App (1st) 103665, 359 Ill. Dec. 433, 966 N.E.2d 1121 (App. Ct. 1st Dist. 2012).  
**Property, not owner, is liable**  
Ill.—ABN AMRO Mortg. Group, Inc. v. McGahan, 237 Ill. 2d 526, 342 Ill. Dec. 7, 931 N.E.2d 1190 (2010).
- 7 Fla.—Miccosukee Tribe of Indians of Florida v. Department of Environmental Protection ex rel. Board of Trustees of Internal Imp. Trust Fund, 78 So. 3d 31 (Fla. 2d DCA 2011).  
Ill.—ABN AMRO Mortg. Group, Inc. v. McGahan, 237 Ill. 2d 526, 342 Ill. Dec. 7, 931 N.E.2d 1190 (2010).  
**Notice reasonably calculated to apprise**  
Md.—Kona Properties, LLC v. W.D.B. Corp., Inc., 224 Md. App. 517, 121 A.3d 191 (2015).
- 8 Ark.—Pulaski Choice, L.L.C. v. 2735 Villa Creek, L.P., 2010 Ark. App. 450, 376 S.W.3d 500 (2010).
- 9 U.S.—Chevalier v. Estate of Barnhart, 803 F.3d 789 (6th Cir. 2015) (applying Ohio law).  
Fla.—Burns v. State, Dept. of Legal Affairs, 147 So. 3d 95 (Fla. 5th DCA 2014).  
Tex.—In re Victory Energy Corp., 431 S.W.3d 728 (Tex. App. El Paso 2014).
- 10 U.S.—Capital Yacht Club v. VESSEL AVIVA, 409 F. Supp. 2d 1 (D.D.C. 2006), judgment amended on other grounds, 2006 WL 2792679 (D.D.C. 2006).  
Cal.—People v. \$25,000 U.S. Currency, 131 Cal. App. 4th 127, 31 Cal. Rptr. 3d 637 (1st Dist. 2005).
- 11 U.S.—Hanson v. Denckla, 357 U.S. 235, 78 S. Ct. 1228, 2 L. Ed. 2d 1283 (1958).  
**Power to seize and hold property**  
Ill.—ABN AMRO Mortg. Group, Inc. v. McGahan, 237 Ill. 2d 526, 342 Ill. Dec. 7, 931 N.E.2d 1190 (2010).
- 12 U.S.—Hanson v. Denckla, 357 U.S. 235, 78 S. Ct. 1228, 2 L. Ed. 2d 1283 (1958).  
Ark.—Pulaski Choice, L.L.C. v. 2735 Villa Creek, L.P., 2010 Ark. App. 450, 376 S.W.3d 500 (2010).  
Cal.—Gramercy Inv. Trust v. Lakemont Homes Nevada, Inc., 198 Cal. App. 4th 903, 130 Cal. Rptr. 3d 496 (4th Dist. 2011).  
Md.—Kortobi v. Kass, 182 Md. App. 424, 957 A.2d 1128 (2008), judgment aff'd, 410 Md. 168, 978 A.2d 247 (2009).  
Minn.—Nagel v. Westen, 865 N.W.2d 325 (Minn. Ct. App. 2015), review denied (Sept. 15, 2015).  
N.C.—Ellison v. Ellison, 776 S.E.2d 522 (N.C. Ct. App. 2015).  
Utah—Aequitas Enterprises, LLC v. Interstate Inv. Group, LLC, 2011 UT 82, 267 P.3d 923 (Utah 2011).  
Wis.—Midland Funding, LLC v. Mizinski, 2014 WI App 82, 355 Wis. 2d 475, 854 N.W.2d 371 (Ct. App. 2014), review denied, 2014 WI 122, 855 N.W.2d 697 (Wis. 2014).

- 13 Fla.—Burns v. State, Dept. of Legal Affairs, 147 So. 3d 95 (Fla. 5th DCA 2014).
- 14 U.S.—U.S. v. Mack, 295 U.S. 480, 55 S. Ct. 813, 79 L. Ed. 1559 (1935).
- 15 § 39.
- 16 U.S.—U.S. v. Timley, 443 F.3d 615 (8th Cir. 2006).
- Tex.—In re Victory Energy Corp., 431 S.W.3d 728 (Tex. App. El Paso 2014).
- 17 Ill.—Metrobank v. Cannatello, 2012 IL App (1st) 110529, 357 Ill. Dec. 977, 964 N.E.2d 656 (App. Ct. 1st Dist. 2012).
- N.H.—Continental Biomass Industries, Inc. v. Environmental Machinery Co., 152 N.H. 325, 876 A.2d 247 (2005).
- 18 Utah—Aequitas Enterprises, LLC v. Interstate Inv. Group, LLC, 2011 UT 82, 267 P.3d 923 (Utah 2011).
- 19 Fla.—Miccosukee Tribe of Indians of Florida v. Department of Environmental Protection ex rel. Board of Trustees of Internal Imp. Trust Fund, 78 So. 3d 31 (Fla. 2d DCA 2011).
- 20 U.S.—Chevalier v. Estate of Barnhart, 803 F.3d 789 (6th Cir. 2015) (applying Ohio law).
- 21 Md.—Kona Properties, LLC v. W.D.B. Corp., Inc., 224 Md. App. 517, 121 A.3d 191 (2015).

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